

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

Midwest Independent Transmission)	
System Operator, Inc. and)	Docket No. ER11-1844-000
International Transmission Company)	

**NOTICE OF INTERVENTION AND PROTEST OF THE
MASSACHUSETTS DEPARTMENT OF PUBLIC UTILITIES**

Pursuant to Rules 211 and 214(a)(2) of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (“Commission”), 18 C.F.R. §§ 311 and 385.214(a)(2), the Commission’s Combined Notice of Filings #1 dated October 21, 2010, and the Commission’s Notice of Extension of Time dated November 4, 2010, the Department of Public Utilities of the Commonwealth of Massachusetts (“Mass DPU”) hereby files this Notice of Intervention and Protest in the above-captioned proceeding. On October 20, 2010, the Midwest Independent Transmission System Operator, Inc. (“MISO”) and International Transmission Company d/b/a *ITC Transmission* (“ITC”) (collectively, “MISO/ITC”) jointly filed proposed revisions to the MISO Open Access Transmission, Energy and Operating Reserve Markets Tariff (“MISO Tariff”) under Section 205 of the Federal Power Act (“MISO/ITC Cost Allocation Filing”).¹

The proposed revisions would implement a cost allocation method that would involuntarily assign and recover a portion of the costs of new ITC Phase Angle Regulating Transformers (“PARs”) located solely in the MISO footprint to two entities outside the MISO

¹ Submission of Tariff Revisions to Involuntarily Allocate and Recover Costs of New Facilities, Docket No. ER11-1844 (filed Oct. 20, 2010) (“MISO/ITC Cost Allocation Filing”).

region, New York Independent System Operator (“NYISO”) and PJM Interconnection, L.L.C. (“PJM”), that purportedly benefit from the proposed facilities.² MISO/ITC propose to allocate costs to NYISO and PJM through unilateral changes to the MISO Tariff. The proposed tariff revisions would allocate costs as follows: (a) MISO: 49.6%; (b) NYISO: 30.9%; and (c) PJM: 19.5%.³

I. INTERVENTION

The Mass DPU is the agency of the Commonwealth of Massachusetts charged with general regulatory supervision over gas and electric companies in Massachusetts and has jurisdiction to regulate rates or charges for the sale of electric energy and natural gas to consumers. Massachusetts General Laws c. 164, § 76 et seq. Therefore, the Mass DPU is a “state commission” as defined by 16 U.S.C. § 796(15) and 18 C.F.R. § 1.101(k). This notice of intervention has been filed within the period established under Rule 210(b). Accordingly, the Mass DPU hereby intervenes in this proceeding pursuant to Rule 214(a)(2).

II. COMMUNICATIONS

The Mass DPU requests that the individuals identified below be placed on the Commission’s official service list in this proceeding and that all communications related to this filing and future filings in this proceeding should be directed to:

² *Id.* at 1. A Protest already filed in this docket by the New York Transmission Owners and New York Municipal Power Agency states that the new PARs “were planned for as part of the MISO regional planning process in order to replace the original PARs which failed.” Motion to Intervene and Protest of the New York Transmission Owners and New York Municipal Power Agency, MISO/ITC Cost Allocation Filing, Docket No. ER11-1844 (filed Nov. 11, 2010) at 4.

³ MISO/ITC Cost Allocation Filing at 4.

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III. PROTEST

The Commission should reject the MISO/ITC Cost Allocation Filing. The Mass DPU appreciates and respects MISO's/ITC's obligation to provide for their regional needs.

However, we have serious concerns about the MISO/ITC Cost Allocation Filing and oppose the cost allocation method proposed by the tariff revisions. Broader application of the cost allocation method beyond the MISO region could set a dangerous precedent and establish a framework for involuntary cost allocation that would have major implications for how costs are recovered.

We are concerned that the proposed tariff revisions, if approved, would allocate costs to entities for which MISO/ITC lack a customer relationship or a tariff or contractual arrangement to share the costs of transmission projects. Moreover, an entity should not be permitted to use a Section 205 filing to assign costs unilaterally to another entity that might be shown to benefit from a project. There is no precedent or basis to extend such Section 205 rights.⁴ Furthermore, permitting such involuntary cost allocation could hinder interregional planning if favorable joint projects discussed could then become the subject of a unilateral

⁴ In addition to extending Section 205 rights to impose charges on other RTOs/ISOs, approval of the proposed revisions to the MISO Tariff would also implicate the Section 205 rights of NYISO and PJM by forcing them to amend their own tariffs to recover costs from their customers for charges involuntarily assigned.

Section 205 filing. It could also lead to counterproductive debates over asserted beneficiaries and the level of benefits received, with contested proceedings following unilateral filings and delaying projects that might have otherwise achieved agreement regarding cost allocation.

Additionally, the Commission's Notice of Proposed Rulemaking in Docket No. RM10-23 ("NOPR")⁵, to which comments were due less than one month before the MISO/ITC Cost Allocation Filing, reflects a different view on interregional cost allocation.⁶ The NOPR rejected the kind of involuntarily allocation of costs that MISO/ITC request in this proceeding. Specifically, the NOPR stated that "[c]osts allocated for an interregional facility must be assigned *only* to transmission planning regions in which the facility is located. Costs cannot be assigned involuntarily under this rule to a transmission planning region in which that facility is not located."⁷ Moreover, the NOPR proposes to require neighboring transmission planning regions to develop a *mutually agreeable* method for allocating costs for new facilities.⁸ The MISO/ITC Cost Allocation Filing contradicts principles outlined in the NOPR and would foreclose the cooperative interregional engagement that the NOPR seeks to encourage and substitute in its place a contentious unilateral cost allocation.

For these reasons, the Mass DPU protests the MISO/ITC Cost Allocation Filing and supports the protests filed this day by the New England Conference of Public Utilities Commissioners ("NECPUC") and the New England States Committee on Electricity

⁵ Notice of Proposed Rulemaking, *Trans. Planning and Cost Alloc. by Trans. Owning and Operat. Pub. Utils.*, 131 FERC ¶ 61,253 (2010) ("NOPR").

⁶ The Mass DPU filed comments in the NOPR on cost allocation. See Comments of the Massachusetts Department of Public Utilities and the Massachusetts Department of Energy Resources, *Trans. Planning and Cost Alloc. by Trans. Owning and Operat. Pub. Utils.*, Docket No. RM10-23-000 (filed Sept. 29, 2010) at 22-28. See generally Reply Comments of the Southern New England States, *Trans. Planning and Cost Alloc. by Trans. Owning and Operat. Pub. Utils.*, Docket No. RM10-23-000 (filed Nov. 12, 2010).

⁷ NOPR at P 174 (emphasis added).

⁸ *Id.* at P 172.

(“NESCOE”) in this proceeding. We file these comments separately to highlight our concerns and to underscore our support for the NECPUC and NESCOE filings.

IV. CONCLUSION

WHEREFORE, for the foregoing reasons, the Mass DPU hereby files this Notice of Intervention and Protest and respectfully requests that the Commission recognize the Mass DPU as an intervener in this proceeding, with all rights attendant thereto, and reject the MISO/ITC Cost Allocation Filing.

Respectfully submitted,
MASSACHUSETTS DEPARTMENT OF
PUBLIC UTILITIES

By its attorney,

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Date: November 17, 2010

CERTIFICATE OF SERVICE

In accordance with 18 C.F.R. § 385.2010 (2008), I hereby certify that I have this day served, via electronic mail or first class mail, the foregoing document upon each person designated on the official service list compiled by the Secretary in these proceedings.

Dated at Boston, Massachusetts on this 17th day of November, 2010.

/s/ Jason R. Marshall
Jason R. Marshall